

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

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BLUESTONE INDUSTRIES, INC. * 18-1073-COAL-SC-GI

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CHESTNUT LAND HOLDINGS, LLC * 18-1074-COAL-SC-GI

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KENTUCKY FUEL CORPORATION * 18-1075-COAL-SC-GI

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NUFAC MINING COMPANY, INC. * 18-1076-COAL-SC-GI

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ORCHARD COAL COMPANY * 18-1077-COAL-SC-GI

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HEARING TRANSCRIPT

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BEFORE: MICHAEL A. ALBERT, Chairman

BROOKS F. MCCABE, Commissioner

RENEE A. LARRICK, Commissioner

HEARING: Tuesday, October 16, 2018

1:02 p.m.

Reporter: Cynthia Piro Simpson

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LOCATION: PSC Howard M. Cunningham Hearing Room
 201 Brooks Street
 Charleston WV

A P P E A R A N C E S

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Counsel for the Public Service Commission

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Counsel for the Chestnut Land Holdings, LLC

ALSO PRESENT:

Greg Birurakis

Kathy Dempsey

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P R O C E E D I N G S

CHAIRMAN ALBERT:

All right. Before we adjourn, we were discussing the proceedings involving Chestnut Land Holdings and Orchard Coal, as well as other proceedings that are ancillary, that being Kentucky Fuel, Nufac Mining and Bluestone Industries.

The parties asked for the opportunity to adjourn, and see if there was a basis for a resolution of these disputes. And we were given a document before we entered the hearing room, captioned Joint Stipulation and Settlement Agreement. So I'll ask, Linda, if you want to tell us about it or how do you want to proceed?

ATTORNEY BOUVETTE:

I'd like to go through it just generally first. And then I can put Mr. Birurakis on to affirm Staff's agreement with the settlement.

CHAIRMAN ALBERT:

All right.

ATTORNEY BOUVETTE:

This is a settlement between all five companies, Bluestone Industries, Chestnut Land, Kentucky Fuel, Nufac Mining and Orchard Coal Company. And it settles fees and then states sanctions.

1 The total amount of the sanctions is
2 \$131,300. And to reach a settlement, we discounted those
3 fees by 25 percent. We also did the CRTS tonnage fees.
4 The total that was due by these companies from July 1st,
5 2015 through June 30th of 2018 was \$38,653.09.

6 There's also a separate settlement
7 agreement that was reached in 2015 between the
8 Transportation Division, the CRTS group and Reserve
9 Resources, representing these companies for some unpaid
10 tonnage fees. And the remaining due under that
11 settlement agreement is \$35,012.

12 So the total tonnage fees is
13 \$73,665.09, which does not include the tonnage fees of
14 Bluestone Industries. We addressed that later on in the
15 agreement.

16 So the companies have agreed to pay the
17 tonnage fees in a total of \$73,665.09. A check is being
18 delivered to the Commission today for that amount of
19 money. Arrangements are being made to pick that up.

20 The administrative sanctions, the
21 payments of the \$98,475, which is the discounted amount,
22 will be made in two lump sums of \$49,237.50. The first
23 payment is due in 15 days, or October 31st. The second
24 payment is due November 29th of 2018. And that would
25 represent payment in full of the administrative sanctions

1 that's been imposed, all the fees.

2 And those fees are listed on Exhibit A,
3 that's attached to the Joint Stipulation. If full
4 payment is not made by November 29th of 2018, the parties
5 agree that the entire amount, the \$131,300 will be due
6 and payable, plus any payment already made. So the
7 figure is discounted. They don't have to pay the
8 schedule.

9 In the next 30 days, the CRTS companies
10 will work with --- the companies will work with the CRTS
11 staff to calculate the tonnage fees due from Bluestone
12 Industries for the time period in question.

13 CHAIRMAN ALBERT:

14 Were there any tonnage fees that are
15 for Chestnut that are ---?

16 ATTORNEY BOUVETTE:

17 Chestnut Land has tonnage fees in the
18 amount of --- \$695.35.

19 CHAIRMAN ALBERT:

20 So you won't be making a calculation
21 --- you know what that is?

22 ATTORNEY BOUVETTE:

23 Yes.

24 CHAIRMAN ALBERT:

25 All right.

1 ATTORNEY BOUVETTE:

2 It was Bluestone and Orchard that we
3 were unsure of the tonnage fees. And we've agreed that
4 Orchard was not operating and didn't have the tonnage
5 fee.

6 So once we determine the amount that
7 Bluestone owes, the company will have five business days
8 to pay that amount in full. And failure to do so will
9 terminate the settlement agreement. And any discounted
10 amounts will defer to the full amount owed.

11 The company shall review the CRTS
12 registrations and update it, if it's necessary. The
13 company shall retain their records for a period of three
14 years, as they're required. They shall file their
15 electronic records timely and comply with all other
16 applicable Commission rules and regulations.

17 And we wanted to emphasize that
18 discounting our administrative sanctions is not something
19 that the Commission typically does. And we don't
20 anticipate doing that in the future. But the ability to
21 settle five cases was a --- and a willingness to
22 accommodate to make payments, again, on the CRTS tonnage
23 fees was an incentive to Staff to make that
24 recommendation for the discount.

25 CHAIRMAN ALBERT:

1 All right.

2 ATTORNEY BOUVETTE:

3 The settlement doesn't involve any
4 current administrative sanctions that are pending now
5 that have not become final.

6 CHAIRMAN ALBERT:

7 That's paragraph nine. That's the
8 explanation of nine.

9 ATTORNEY BOUVETTE:

10 Correct.

11 CHAIRMAN ALBERT:

12 Okay.

13 ATTORNEY BOUVETTE:

14 And then ---.

15 CHAIRMAN ALBERT:

16 So that means this is only the existing
17 ones. So if there's any in the future, it won't be ---
18 they won't be affected?

19 ATTORNEY BOUVETTE:

20 That is correct.

21 CHAIRMAN ALBERT:

22 All right.

23 ATTORNEY BOUVETTE:

24 Yes. And I think that's the extent of
25 it. We would ask that the Commission view it and adopt

1 it. And we would really like to have an order today from
2 the bench, if possible, since in good faith, the
3 companies are making that payment of \$73,000 today.

4 CHAIRMAN ALBERT:

5 Well, we don't issue orders from the
6 bench. But we're willing to give you a --- what we refer
7 to as bench decrees, bench orders or some such thing.
8 But we only speak through our orders.

9 But I think certainly that we've looked
10 at this. And I think it's a reasonable and rational
11 resolution of disputes on particular fees, with the
12 undertakings to certainly get right with the Board, if
13 you will. And on a going-forward basis, to do the --- to
14 make sure the recordkeeping and the contacts and the
15 filings, and so forth are made as required.

16 Do you want to put your witness on
17 or ---?

18 ATTORNEY BOUVETTE:

19 Yes, Mr. Birurakis.

20 -----
21 GREG BIRURAKIS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 -----
24 DIRECT EXAMINATION

25 BY ATTORNEY BOUVETTE:

1 Q. Mr. Birurakis, have you had an opportunity to
2 view the Joint Stipulation and Settlement Agreement?

3 A. Yes.

4 Q. And do you have a copy of that with you?

5 A. Yes.

6 ATTORNEY BOUVETTE:

7 Your Honor, we would like to identify
8 the Joint Stipulation and Settlement Agreement as Staff
9 Exhibit 1.

10 CHAIRMAN ALBERT:

11 We already have a Staff Exhibit 1 in
12 most of these.

13 ATTORNEY BOUVETTE:

14 Okay, so ---.

15 CHAIRMAN ALBERT:

16 You want to call it --- how about we
17 call it Joint Exhibit 1.

18 ATTORNEY BOUVETTE:

19 Joint Exhibit 1 sounds good.

20 (Joint Exhibit 1 was marked for
21 identification.)

22 CHAIRMAN ALBERT:

23 All right.

24 BY ATTORNEY BOUVETTE:

25 Q. Did you have involvement in negotiation,

1 preparation and finalization of this document?

2 A. Yes.

3 Q. Does it represent what the parties agree to?

4 A. Yes.

5 Q. Does it represent a reasonable compromise of the
6 administrative sanctions that the Commission has imposed?

7 A. Yes.

8 Q. Do you recommend to the Commission that they
9 approve the Joint Stipulation and Settlement Agreement as
10 a resolution of all five cases?

11 A. I do.

12 Q. Do you believe that the resolution, as
13 recommended in the stipulation, is fair and reasonable
14 and promotes the public interest?

15 A. I do.

16 ATTORNEY BOUVETTE:

17 Okay. I have no further questions.

18 CHAIRMAN ALBERT:

19 All right. Mr. Birurakis, I don't have
20 any further questions of you. Thank you, sir.

21 Mr. Ball, you're not a witness. But as
22 counsel for the Bluestone, Chestnut, Kentucky Fuel, Nufac
23 and Orchard, you've heard the discussion by Staff and the
24 witness about the nature of the Joint Stipulation and
25 Agreement for Settlement. Do you agree with the proposed

1 settlement?

2 ATTORNEY BALL:

3 Yes, sir.

4 CHAIRMAN ALBERT:

5 All right. And it's your intention or
6 your parties' intention --- that your clients will agree
7 to this or to abide by the --- you had the authority to
8 execute this, did you not?

9 ATTORNEY BALL:

10 That's correct.

11 CHAIRMAN ALBERT:

12 And it's your intention to have or
13 request that your clients abide by all provisions of
14 this?

15 ATTORNEY BALL:

16 Yes, sir.

17 CHAIRMAN ALBERT:

18 All right. Do you think it's a
19 reasonable and rational settlement of these disputes?

20 ATTORNEY BALL:

21 Yes, sir.

22 CHAIRMAN ALBERT:

23 All right. Okay. I don't think we
24 have anything further.

25 We will indicate from the bench now

1 that we will probably not enter an order at this time.
2 But that as we go forward, assuming that all the terms
3 and conditions that are laid out in here, and payments
4 are made in a timely fashion, that we will simply enter
5 an order at some point in the near future. And probably
6 immediately after the payment of the last of the sum due
7 dismissing these proceedings as an agree to settle, if
8 that's okay with you, the way to handle it?

9 ATTORNEY BALL:

10 That's acceptable with us.

11 CHAIRMAN ALBERT:

12 We have the matter involving the
13 hearing for tomorrow, which would be I guess the last of
14 our clients, Bluestone Industries. I see no reason to
15 move forward with that. So we'll defer our proceeding in
16 that matter pending the further resolution of the Joint
17 Stipulation and Agreement. Is that right?

18 ATTORNEY BALL:

19 That's right. Yes, sir.

20 CHAIRMAN ALBERT:

21 Okay. I don't know that we need to put
22 all the exhibits in at this time. We'll just proceed
23 with --- let's hope we don't need to put them all in.
24 But if at some point in the future we need to do that,
25 we'll do so. In the meantime, I think that --- unless

1 you all feel that we need to.

2 ATTORNEY BOUVETTE:

3 No, Your Honor.

4 CHAIRMAN ALBERT:

5 Okay. Well, then, we will accept the
6 Joint Stipulation and Settlement Agreement as having been
7 filed in the proceedings. And we'll give you a strong
8 indication that there's every reason to expect us to
9 approve that Joint Stipulation and Settlement Agreement
10 upon the conclusion of all the terms and conditions.

11 And I want to thank the parties. These
12 are not easy to come about. I know that it took a lot of
13 work on your part. And we appreciate your effort to get
14 this thing --- this matter resolved. And let's move
15 forward to get this thing finalized and off our docket.
16 Thank you very much.

17 ATTORNEY BALL:

18 Thank you.

19 CHAIRMAN ALBERT:

20 All right. We're adjourned.

21
22 * * * * *

23 HEARING CONCLUDED AT 1:25 P.M.

24 * * * * *
25

CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

Dated the 29th day of October, 2018



Court Reporter

Cynthia Piro Simpson